

## **EXHIBIT 11**

**to Declaration of William J. Goines in Opposition to  
Plaintiffs' Motion for Class Certification**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**CERTIFIED COPY**

ANN OTSUKA, et al.,  
Plaintiff,

-VS-

No. C07-02780 BZ

POLO RALPH LAUREN  
CORPORATION, a Delaware  
corporation, et al.

Defendants.

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Videotaped Deposition of

CORINNE PHIPPS

Tuesday, June 12, 2007

Reported by:  
KACY PARKER BARAJAS, RPR, CRR  
CSR No. 10915  
Job No. 15854LR



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1 A. Oh, goodness, I can't actually remember at this  
2 point. Let me think about that for a minute. It might  
3 have -- it might have been Benefit Cosmetics.

4 Q. Were you employed at Benefit Cosmetics before or  
09:49:56 5 after your employment at Polo Ralph Lauren?

6 A. I believe it was before.

7 Q. Do you recall -- let me state it. Our records  
8 reflect that you joined Polo Ralph Lauren in or about June  
9 of 2004 and left at the latter part of October '04. Is that  
10 consistent with your recollection?

11 A. Yes.

12 Q. At the time you left Polo Ralph Lauren, did you  
13 seek employment?

14 A. Yes.

15 Q. And do you recall with which company or companies  
09:50:25 16 or organization you worked after you left Polo Ralph Lauren?

17 A. It may have been Interstate Batteries. I would  
18 have to look at my resume actually.

19 Q. Prior to -- when you worked at Benefit Cosmetics,  
20 what was the nature of your position?

21 A. You know, I'm sorry. I don't remember.

22 MR. GOINES: Why don't we mark as Exhibit A a  
09:50:58 23 document entitled Corinne K. Mullen. It is identified as  
24 POLO 00023.

25 (Exhibit A was marked.)

1 A. Oh, no.

11:41:15 2 Q. I want to ask you a question kind of in the general  
3 area. We've been talking about as to whether during the  
4 course of your employment from the latter part of June 2004  
11:41:27 5 through the latter part of October 2004 you took rest breaks  
6 during the course of your work shifts?

7 A. Is there a question? I'm sorry.

8 Q. Did you take rest breaks?

9 A. I did, yes.

10 Q. Okay. You were in a department that had four  
11 salespeople plus a manager, correct?

12 A. Yes.

13 Q. Okay. And during the typical shift in which you  
14 worked, how many other salespeople were working alongside  
15 you in that department?

16 A. Typically there would be two salespeople, that  
11:41:59 17 would be including me, and a manager.

18 Q. So two salespersons plus a manager would work the  
19 same shift?

20 A. Simultaneously, yeah.

21 Q. Okay. And were you -- did you take rest breaks  
22 during those shifts?

23 A. Yes, I did.

24 Q. And on what frequency did you take rest breaks?

25 A. I took my rest breaks, one in the morning and one

1 in the afternoon, regularly.

11:42:28 2 Q. And were the -- how were the rest -- was your rest  
3 break scheduled, or how was it communicated to you, hey,  
4 Corinne, your turn to go on a break? I'm just trying to  
5 figure out how it happened. I'm not suggesting that's how  
6 it happened. I just want to know how it happened.

7 A. Well, I had mentioned earlier there was no written  
8 schedule of when -- to the best of my recollection, there  
9 was no written schedule as to when you would take a lunch  
10 break, so there would be no written schedule as to when you  
11:42:56 11 would take your rest period. So basically we -- the two  
12 people who would be working the floor, we would just work it  
13 out amongst one another when do you want to take your rest  
14 break, when do you want to take your rest break, and we  
15 would kind of tier it from there. And then just check with  
16 our manager that we had actually -- we're going to take  
17 our -- we're going to go take our 15 minutes to sit down or  
18 whatever it was.

19 Q. And it's your recollection that you would take such  
20 a break twice during each workday?

21 A. In an eight-hour period, yes.

22 Q. Once in the morning, once in the afternoon?

23 A. That's correct.

24 Q. Now procedurally though you wouldn't actually go  
25 log out of the system to take a rest break?

1 employees. Were you aware of that policy while you were an  
2 employee of the company?

3 A. Yes, I was.

15:43:26 4 Q. And how was it -- that policy communicated to you?

5 A. I actually don't remember, but I know that it was a  
6 taboo subject.

7 Q. And was the rationale or the basis of the policy  
8 ever explained to you?

9 A. No.

10 Q. Did you ever discuss your wages or compensation  
11 with coworkers?

12 A. I think I did.

13 Q. So regardless of the policy, you shared your  
14 compensation with your coworkers to the extent you felt you  
15 needed to or wanted to?

16 A. Yeah. I guess that's -- that would be correct.

15:44:00 17 Q. Did you ever get disciplined for sharing your wages  
18 and compensation information with your coworkers?

19 A. No, I didn't.

20 Q. Do I understand that on a daily basis you could  
21 determine how much commission any of your coworkers earned,  
22 correct?

23 A. Yes.

24 Q. That was public data available to you as a person  
25 in the San Francisco store?

## **EXHIBIT 12**

**to Declaration of William J. Goines in Opposition to  
Plaintiffs' Motion for Class Certification**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ANN OTSUKA, an individual,  
et al.,

**CERTIFIED COPY**

Plaintiffs,

vs.

No. C-07-02780-SI

POLO RALPH LAUREN CORPORATION,  
et al.,

Defendants.

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Videotaped Deposition of

RENEE DAVIS

wednesday, March 19, 2008

Reported by:  
IRIS MEINKE-SMITH, RMR/CRR  
CSR No. 3798  
Job No. 18236LR



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1 other than discussing the issue of rest  
2 breaks and lunch breaks with Rudy and then Lucille  
3 coming into the tail end of the conversation, did you  
4 discuss any other issues that are presented in the  
10:29:47 5 complaint, as you understand it, with any of your  
6 other former co-workers at the factory outlet?

7 A. The only other thing that Rudy and I  
8 discussed -- Lucille wasn't a part of the  
9 conversation -- was waiting at the door at 10 o'clock  
10:29:59 10 to leave and not being able to do so because we had  
11 to wait to be searched and have a manager let us out.

12 Q. 10 o'clock meaning 10 o'clock p.m., correct?

13 A. Yes.

14 Q. And what did you and Rudy discuss in that  
10:30:15 15 regard?

16 A. Just how we were tired of having to do it.

17 Q. Tired of having to do what?

18 A. Wait every time we're supposed to leave at  
19 10 o'clock, and the majority of the time we couldn't  
10:30:26 20 because there wasn't anybody available to let us  
21 leave.

22 Q. Anything else you recall discussing with  
23 Rudy or Lucille?

24 A. No.

10:30:40 25 Q. Other than co-workers in your -- in the

1 cabazon outlet store, have you had conversations with  
2 any other employees of Polo's factory outlet stores  
3 regarding issues in this case?

4 A. No.

10:30:52 5 Q. Have you been to any other Polo factory  
6 outlet stores?

7 A. No.

8 Q. Do you know how many other factory outlet  
9 stores Polo maintains in the State of California?

10:31:05 10 A. I believe there are at least two or three  
11 others. I know there's Camarillo and then there are,  
12 I think, a couple up this way.

13 Q. As part of your role in this case, have you  
14 made any steps to understand the practices with  
10:31:23 15 regard to rest breaks and lunch breaks in stores  
16 other than the Cabazon outlet store?

17 A. No.

18 Q. Have you made any steps to learn how the  
19 loss prevention searches are conducted at the end of  
10:31:37 20 the business day at any store other than the Cabazon  
21 factory outlet store?

22 A. No.

23 Q. Do you know the physical layout of any of  
24 the other factory outlet stores owned by Polo in the  
10:31:52 25 State of California?

1 A. No.

2 Q. With regard to Rudy, do you know what  
3 department he worked in when you two overlapped?

4 A. Men's.

10:32:07 5 Q. He worked in men's. And how about Lucille?

6 A. She was a cashier. Excuse me.

7 Q. And if I understand correctly -- can I call  
8 you Renee?

9 A. Sure.

10:32:17 10 Q. Thank you.

11 Renee, you started as a cashier in Cabazon;  
12 is that correct?

13 A. Yes.

14 Q. And did you -- was your position that of a  
10:32:27 15 cashier during the entire time you worked at Polo or  
16 did that position change?

17 A. I was -- it remained the same. But I did do  
18 other duties or worked in different departments, but  
19 my primary position was cashier.

10:32:44 20 Q. And so primarily you functioned as a  
21 cashier, which -- can you tell me -- just describe  
22 for me generally what you did as a cashier.

23 A. Rang up merchandise, you know, bagged it and  
24 gave it to the customers, took e-mail orders and  
10:33:03 25 phone orders.

1 each day what time that your break -- what time your  
2 rest break was expected to be and what time your  
3 lunch break was expected to be?

4 A. Yes.

11:00:35 5 Q. And then how would you go about -- you're  
6 working, let's just say, a 12:00 to 9:00 shift. And  
7 how -- let's say your -- you saw a schedule, oh, I'm  
8 supposed to get a break at 2 o'clock. How would you  
9 go about taking that break?

11:01:00 10 A. I would ask whoever was in charge that day  
11 if it was okay for me to take my break at that time.

12 Q. And -- and what did you understand the  
13 variables were as to whether you were going to be  
14 able to take your break at that time or not?

11:01:18 15 A. It depended on how busy the store was, if  
16 there was enough available coverage.

17 Q. And during the totality of your employment  
18 at Polo, is it your contention that you did not get  
19 all the rest breaks that you were entitled to take?

11:01:44 20 A. Yes.

21 Q. And how would I -- how would you -- or have  
22 you calculated how many rest breaks you missed?

23 A. That -- that would depend on whether we're  
24 talking about the seasonal time when it's extremely  
11:02:00 25 busy as compared to the other, say, seven months out

1 of the year when it's just basic, everyday traffic.

2 Q. Okay. You've used the phrase "seasonal."  
3 Were there periods that you considered seasonal and  
4 busier than the regular times?

11:02:15 5 A. Oh, absolutely.

6 Q. And can you tell me when those were?

7 A. Say, from the end of October through maybe  
8 the first week or two of January.

9 Q. Okay. Was that -- any other times that you  
11:02:35 10 would have -- you would identify as seasonal?

11 A. No.

12 Q. Okay. And so what I'm trying to understand  
13 is, is you -- one of the issues in this lawsuit that  
14 you've contended is that you missed your scheduled  
11:02:59 15 rest breaks. And I'm trying to understand how many  
16 of those rest breaks you believe you missed during  
17 the term of your employment and how you would go  
18 about calculating that.

19 A. Well, during the seasonal position when it's  
11:03:13 20 really busy, I'd say if I worked five days out of the  
21 week, at least four of those days I would miss at  
22 least one of my breaks. And there have been a couple  
23 of occasions where I didn't even get one. However, I  
24 did get the lunch. But the scheduled breaks I wasn't  
11:03:32 25 allowed to take because it was just too busy and

1 there was not enough coverage in the store.

2 Q. So if I understand correctly, you would  
3 estimate that during the -- call it a seasonal  
4 time --

11:03:42 5 A. Okay.

6 Q. -- the last part of October to the first  
7 part of January, if you worked a full five-day --  
8 strike that -- if you worked a five-day period, you  
9 missed at least one of your breaks four of those five  
10 days?

11:03:58

11 A. Yes.

12 Q. And the reason for that was because there  
13 was just too much business?

14 A. Yes, and not enough coverage for it.

11:04:12 15 Q. Not enough coverage at the cashier's stand  
16 or not enough coverage in the store in general?

17 A. In the store in general.

18 Q. Do you have any personal knowledge as to  
19 whether other people who worked at the Cabazon store  
11:04:25 20 during this seasonal period, other than perhaps Rudy  
21 and Lucille, missed the same number of rest breaks  
22 during the seasonal period that you did, assuming the  
23 same parameters of a five-day workweek?

24 A. Yes.

11:04:45 25 Q. And how would you go about estimating that?

1 A. I would say it was pretty much the same as  
2 me.

3 Q. And what do you base that on?

4 A. Conversations with other employees, because,  
11:04:59 5 you know, some of us would smoke and it's time to go  
6 on our break, and so the gist of the conversation  
7 was, "Man, I'm dying for a cigarette because I didn't  
8 get a chance to take my break." Just little comments  
9 like that.

11:05:11 10 Q. Do you know how many people worked on any  
11 particular shift during the seasonal period?

12 A. Okay. We've got six station -- I want to  
13 say 20 to 30.

14 Q. And of -- how many of those 20 to 30 during  
11:05:32 15 this normal shift would have, from your experience,  
16 missed at least one rest break?

17 A. At least half, if not more.

18 Q. I think you indicated, but I want to make  
19 sure I understood it correctly, that regardless of  
11:05:54 20 the season, meaning the busier time versus the  
21 regular time, when you worked a shift that entitled  
22 you to a lunch break, you got your lunch break?

23 A. Most of the time, yes.

24 Q. And departing from the heavier time, the  
11:06:13 25 latter part of October to the first part of

55

1 January --

2 A. Uh-huh.

3 Q. -- the other seven months, when you worked a  
4 shift that entitled you to a rest break, can you tell

11:06:23 5 me in general whether you were able to take those  
6 rest breaks?

7 A. I'd say maybe three-quarters of the time,  
8 yes.

9 Q. What do you base that estimate on?

11:06:39 10 A. Can you rephrase that, please?

11 Q. Sure. We're talking now -- I think you  
12 described it as roughly the seven other months of the  
13 year when it was not this high season. When you --  
14 in your workday, you -- if I'm understanding  
11:06:57 15 correctly, you said about three-quarters of the time  
16 I got my rest breaks and about a quarter of the time  
17 I didn't. Is that right?

18 A. Right.

19 Q. And I think you said earlier when we were  
11:07:06 20 talking about the season, you were -- you said I  
21 would miss one of my rest breaks, not both of them;  
22 is that right?

23 A. There were times I would miss one. I know  
24 for a fact the two days after Thanksgiving and  
11:07:23 25 Christmas you really just didn't even get them. You

56



1 would get your lunch, but you wouldn't get your  
2 breaks at all.

3 Q. Other than the few days following  
4 Thanksgiving and Christmas where you said you  
11:07:38 5 generally wouldn't get your breaks at all, is that  
6 your testimony?

7 A. I'm sorry?

8 Q. Other than your lunch break.

9 A. Could you repeat that again?

11:07:45 10 Q. I sure can. I sure can.

11 I'm trying to understand just the frequency  
12 that you contend you missed your rest breaks. And  
13 focusing on the -- what we are calling the seasonal  
14 area -- the seasonal time, I thought your testimony  
11:08:03 15 was that if I worked a five-day -- if I worked in any  
16 five-day period, for four of those days I would miss  
17 at least one. That's what I wrote down. Is that --

18 A. That's correct.

19 Q. okay. And I take it the other day you would  
11:08:20 20 get both of them, other than the Thanksgiving,  
21 Christmas crunch where you said I just didn't get my  
22 breaks at all?

23 A. Right.

24 Q. Those would be rest breaks, but did you get  
11:08:29 25 meal breaks?

1 A. Yes.

2 Q. Okay. Now, focusing on the other period of  
3 time, the regular time.

4 A. Okay.

11:08:36 5 Q. I understood your testimony to be that about  
6 three-quarters of the time I got both my rest breaks  
7 and my meal break, but for about a quarter of the  
8 time I missed at least one break. Is that what  
9 you're saying?

11:08:50 10 A. Yes.

11 Q. Okay. These -- where the schedule for the  
12 day was posted, was that only posted in one place or  
13 were they posted in multiple places in the store?

14 A. The main schedule was posted in the back by  
11:09:36 15 the office door. And then they took that, and that's  
16 where they made the daily schedule, which was on a  
17 clipboard up at the cash registers.

18 Q. And how many cash registers were there?

19 A. Six, I believe.

11:09:54 20 Q. Were you normally stationed at -- on the  
21 days you worked, did you normally work the same cash  
22 register or did you rotate?

23 A. They rotated.

24 Q. At the time that you became a permanent  
11:10:56 25 part-time employee, did you understand one way or

1 A. Yes.

2 Q. Since you left the employ at the Cabazon  
3 store, have you sought to become re-employed with  
4 Polo in any company -- in any position or any store?

01:42:40 5 A. No.

6 MR. GOINES: I'm going to have marked as our  
7 next exhibit, which will be 549, a two-page document  
8 that appears to be in handwritten form. And it is  
9 Bates Polo 1758.

01:43:02 10 (Exhibit 549 was marked for  
11 identification.)

12 Q. BY MR. GOINES: Ms. Davis, is this document  
13 in your handwriting?

14 A. No.

01:43:25 15 Q. Do you recognize the handwriting?

16 A. Yes.

17 Q. And whose handwriting is it?

18 A. It looks like April Hicks'.

19 Q. Was the document that we have marked as  
01:43:39 20 Exhibit 549 ever given to you to comment on by April  
21 Hicks or anyone else at the Polo Cabazon store?

22 A. No.

23 MR. GOINES: I would like to have marked as  
24 Exhibit 550 a letter addressed to Renee Davis at  
01:44:03 25 1068 East Nicolet Street, Banning, from April Hicks.

92

1 It does not bear a date, but bears production numbers  
2 Polo 1760 and 61.

3 (Exhibit 550 was marked for  
4 identification.)

01:44:30 5 Q. BY MR. GOINES: Ms. Davis, would you be kind  
6 enough to take a look at Exhibit 550?

7 A. Okay.

8 Q. Okay. Do you recall receiving this letter?

9 A. Yes.

01:44:43 10 Q. And the second sentence refers to an  
11 August 14th -- it has a reference to August 14th.  
12 would this have been, obviously, August 14th, 2003?

13 A. I'm sorry, could you repeat that?

14 Q. I sure can.

01:45:00 15 The second sentence of this letter states  
16 that, "On the 14th of August, Herb Rafetto and I  
17 administered a first written warning to you on time  
18 and attendance."

19 Does this refresh your recollection that in  
01:45:14 20 the middle part of August 2003 you received a written  
21 warning regarding your attendance?

22 A. Yes.

23 MR. GOINES: I'm going to have marked as  
24 Exhibit 550 a document entitled, "Polo Ralph Lauren  
01:45:29 25 Factory Stores Performance Discussion Recap."

1 MR. KITCHIN: That would be 551.

2 MR. GOINES: Did I misspeak again?

3 MR. KITCHIN: Yeah. It's after lunch.

4 (Exhibit 551 was marked for

01:45:50 5 identification.)

6 Q. BY MR. GOINES: Ms. Davis, Exhibit 551  
7 appears to be a form. And there's a signature next  
8 to "Employee Signature," and I wanted to ask if that  
9 is your signature?

01:46:08 10 A. Yes.

11 Q. And you signed this on or about August 10,  
12 2003?

13 A. Yes.

14 Q. And this appears -- appears to be -- there's  
01:46:18 15 a check mark in the upper portion of this document  
16 entitled -- where it's a check next to the phrase  
17 "First Written Warning." And then it says, "Incident  
18 or Performance Issue," and there's a description  
19 where it states, "Renee has 16 instances since the  
01:46:37 20 31st of March where she has either been sick, has not  
21 had a ride, or had a personal issue."

22 Do you recall having a discussion with Herb  
23 Rafetto and April Hicks regarding this performance  
24 issue mentioned in Exhibit 551?

01:47:01 25 A. Yes.

1 Q. And what do you recall them saying to you  
2 with regard to the reason that you were being  
3 provided with a written warning?

4 A. The reason why?

01:47:12 5 Q. Yes.

6 A. I believe because they were excessive  
7 absences.

8 Q. Did you -- did you disagree with the -- with  
9 the -- the statement made on Exhibit 551 that you had  
01:47:33 10 16 absences since March 31st where you had been sick,  
11 did not have transportation or had a personal issue?

12 A. Do I disagree with it?

13 Q. Did you disagree with it at the time?

14 A. No.

01:48:03 15 Q. Do you recall the discussion with April and  
16 Herb at the time this Performance Discussion Recap  
17 was provided to you?

18 A. No.

19 Q. Do you recall asking either Herb or April  
01:48:27 20 what information they based the conclusion on that  
21 you had had these absences referenced in Exhibit 551?

22 A. No.

23 Q. What -- what did either Renee -- excuse me,  
24 what did either April or Herb tell you you needed to  
01:48:51 25 do to avoid further discipline?

1 A. To try to make it to work when scheduled,  
2 and if I can't come in, call the two hours ahead of  
3 time that they would like for you to call in in order  
4 to get coverage for you.

01:49:08 5 Q. Did you consider this performance issue a  
6 serious one?

7 A. No.

8 Q. And why not?

9 A. Because I had explained to them prior to  
01:49:27 10 them hiring me that my husband has cancer, I have an  
11 asthmatic child, and this is after me coming back  
12 from a car accident. And I had provided them with  
13 doctor's notes, but they would schedule me the day  
14 after -- if a note took me off to like a certain day,  
01:49:44 15 and then they would still put me on the schedule the  
16 next week. And I'd already explained to them, well,  
17 after this date I have to go back to be checked to  
18 see if I am able to go to work.

19 Q. So is it your -- is it your recollection  
01:49:59 20 that you were -- well, let me back up.

21 If I understood your testimony a moment ago,  
22 you didn't disagree that you had the absences as  
23 noted on this -- on Exhibit 551, correct?

24 A. Correct.

01:50:16 25 Q. But is it your testimony that you felt

1 can do. I'm not physically able to return back to  
2 work."

3 Then I had a couple of deaths in the family  
4 also, so I had to provide newspaper articles, death  
01:51:25 5 certificates, things like that.

6 Q. So you felt that their -- their -- you felt  
7 this performance or written warning was not deserved?

8 A. Well, I'm sure it was deserved because it is  
9 excessive. But my point to them was they were aware

01:51:49 10 that this was going to happen. I mean, it's more  
11 excessive than I thought, too, because I had the car  
12 accident. But, you know, I told them that my husband  
13 is going through chemotherapy, these types of things.  
14 And if I need to call off when it's scheduled, I'll  
01:52:02 15 let you know as soon as I know. And that was about  
16 all I could do.

17 Q. Okay. Taking a look at Exhibit 550, please,  
18 I think it's the letter.

19 A. okay.

01:52:19 20 Q. Did this letter -- was this -- this letter  
21 appears to be after the Performance Discussion Recap  
22 just because it appears to refer to dates that are  
23 dated after the August 10, 2003.

24 And do you recall receiving this letter at  
01:52:39 25 your home?



1 A. Yes.

2 Q. Okay. Do you recall responding to this  
3 letter?

4 A. No.

01:53:04 5 MR. GOINES: Let me -- I'm going to come  
6 back to this letter in a minute.

7 But let me have marked as Exhibit 552 a  
8 document entitled, "Performance Discussion Recap,"  
9 bearing the date -- bearing the production number  
10 1767.

01:53:23

11 (Exhibit 552 was marked for  
12 identification.)

13 Q. BY MR. GOINES: Ms. Davis, I note that  
14 Exhibit 552 has not been signed by anyone.

01:53:55

15 Do you recall being provided with a copy of  
16 Exhibit 552 at any time prior to taking a look at the  
17 personnel file that Polo provided to Mr. Kitchen?

18 A. I never received this.

19 Q. Okay.

01:54:26

20 A. It actually is dated a week apart.

21 Q. If I could ask you again to focus your  
22 attention on 552.

23 A. Okay.

24 Q. There's a reference to -- under the heading  
01:54:41 25 "Summary of Previous Discussions," it says, "On

1 A. Yes.

2 Q. And can you tell me what you recall  
3 discussing with her about that?

4 A. That, once again, I explained to her that  
01:58:33 5 just because I was taken off until that period of  
6 time, I would need to go back for a follow-up checkup  
7 to make sure I could go back to work and to also get  
8 the medical release which they requested me to get.

9 Q. And did you obtain that?

01:58:50 10 A. Yes.

11 Q. And April seems to suggest in this letter  
12 that if you don't show up on the 26th, you're going  
13 to be fired. Did that happen?

14 A. No.

01:59:02 15 Q. Did you understand it didn't happen because  
16 April understood your explanation of needing to get a  
17 further release from your physician?

18 A. I was never given an explanation one way or  
19 another. I just know it never happened.

01:59:21 20 MR. GOINES: I would like to have marked as  
21 our next exhibit, which will be 553, a document  
22 entitled, "Performance Discussion Recap," bearing the  
23 date February 7, 2004.

24 (Exhibit 553 was marked for  
01:59:32 25 identification.)

1 Q. BY MR. GOINES: Ms. Davis, is this a  
2 document that was presented to you on or about  
3 February 7th, 2004?

4 A. Yes.

02:00:06 5 Q. And do you recall who presented this to you  
6 for signature?

7 A. Probably April.

8 Q. The upper portion of this document says  
9 discussion initiated by A. Hicks and H. Rafetto.

02:00:21 10 Does that in any way assist in refreshing  
11 your recollection as to whether both April and Herb  
12 presented this to you or --

13 A. Yes.

14 Q. Okay. So you think it was both?

02:00:30 15 A. Yes.

16 Q. Okay. Under the summary -- under the  
17 heading "Summary of Previous Discussions," it states,  
18 "Renee received a first written warning for time and  
19 attendance in August 2003. Since then she has had  
02:00:57 20 numerous attendance problems and has been counceled  
21 on her actions."

22 My question to you is, do you recall,  
23 following the first written warning in August, having  
24 discussions with either April or Herb regarding your  
02:01:09 25 attendance issues?

103

1 A. Yes.

2 Q. And on how many occasions do you recall  
3 having discussions with April and Herb regarding your  
4 attendance between August '03 and February of '04?

02:01:22 5 A. Actually, they really didn't start until  
6 Black Friday, the day after Thanksgiving.

7 Q. And you refer to Black Friday because  
8 that's --

9 A. That's just what they call it. In retail,  
02:01:35 10 that's what they refer it to. It's supposed to be  
11 the worst shopping day of the year, whatever.

12 Q. Gotcha.

13 A. Because I had my accident on Thanksgiving.  
14 So the next day I reported to work, and they could  
02:01:48 15 clearly see that I was not able to work. I explained  
16 to them what had happened. They sent me home.

17 And I had asked to be removed off of the  
18 schedule. She had some issues with it. And we kind  
19 of exchanged words because she wasn't understanding I  
02:02:06 20 was just in a car accident. I know it's Black  
21 Friday, but I can't be there.

22 And then she reminded me of our previous  
23 conversation. And at that point, you know, I didn't  
24 care. I said, "My health is more important to me."  
02:02:19 25 If you can't understand that, I don't know what to

1 tell you."

2 Q. Other than the occasion of the discussion  
3 with April on this -- on the -- on the Black Friday,  
4 had you had any other discussions with her between  
02:02:37 5 August and February regarding your attendance-related  
6 issues?

7 A. The only ones I recall are, if I were  
8 absent, being told sarcastically, "Well, you know you  
9 need a doctor's note."

02:03:04 10 Q. Under the heading of this particular  
11 exhibit -- we're looking at 553 -- "What is the  
12 Action Plan," was that action plan on this document  
13 prior to your signing it?

14 In other words, it says, "Renee understands  
02:03:22 15 that as of Today, 2-7-04, she is on final written  
16 warning for time and attendance," and it goes on to  
17 describe certain conditions.

18 My question to you is, was that typing on  
19 Exhibit 553 at the time you signed it?

02:03:38 20 A. Yes.

21 MR. GOINES: I'm going to have marked as our  
22 next exhibit, Exhibit 554, a one-page letter bearing  
23 the date February 28, 2004.

24 (Exhibit 554 was marked for  
02:03:57 25 identification.)

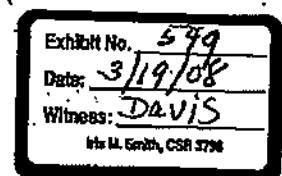
105

2

## **EXHIBIT 13**

**to Declaration of William J. Goines in Opposition to  
Plaintiffs' Motion for Class Certification**

3.31.03 (10-7) sick  
 4.5.03 (12-9) went home @ 4:00 sick  
 4.8.03 (10-4) personal Issues  
 4.10.03 (10-4) husband sick  
 4.11.03 (10-4) husband to Dr  
 4.13.03 (2-6) car trouble  
 5.4.03 (2-6) call out / family  
 5.5.03 (11-3) call out to Will / can't come in  
 5.15.03 (11-4) sick - crying because of Dad  
 5.20.03 (3-7) personal  
 6.3.03 (11-8) sick  
 5.19.03 (3-8) no show  
 6.14.03 (4-11) sick kid  
 6.15.03 (12-5) personal - father's day  
 6.22.03 (12-5) no ride  
 6.25.03 (12-5) came in later (tooth problem)  
 7.2.03 (12-5) sick  
 7.7.03 (12-8) went home @ 7 - tooth pain  
 7.10.03 (12-9) sick  
 7.11.03 (1-10) husband Dr  
 Called out and said: she might be out for  
 husband's Dr problem - never called back  
 7.12.03 (12-9) No show No call  
 7.13.03 (11-5) No show  
 Called on Monday to say she did not check schedule  
 for shifts and will be out sick Mon. + Tues for  
 sick - DR NOTE - exhaustion / dehydration  
 7.20.03 - (11-5) grandparent died (S.S.)  
 7.25.03 - (1-10) 8  
 7.26.03 - (12-5) 5  
 7.30.03 - (12-5) call out  
 7.27.03 - (11-8) NO SHOW  
 8.1.03 - (7-11) - "



POLO 01758

3.16	(12-9) called at 11:10 - sick headache
8.15	(2-11) clocked out at 3:45 - would not finish shift
10.23	(11-8) called said 2-10 called @ 3 <sup>30</sup> family emergency
10.20	(10-5) came @ 10:30
11.6.03	(9/6 12-9) No Call
11.17.03	(9/6 12-9) No Call
11.30	8-5
12.1	4-93
12.3	4-93
12.6	12-53
12.7	2-7 - No Note to return
	Received Note worked on 12/12 1 hr
12.13	2-7 No Show
12.13	12-9 sick





# POLO RALPH LAUREN

FACTORY STORE

Renee Davis  
1068 E. Nicolet St  
Banning, Ca 92220

Dear Renee,

In reference to our conversation on Friday, I wanted to further discuss with you our position on your attendance. On the 14<sup>th</sup> of August, Herb Rafetto and I administered a first written warning to you on time and attendance. During that conversation, we all agreed that if you were to have another absence, you would need to bring in a doctor's note excusing you, otherwise you would be served with a final written warning. On the 15<sup>th</sup> of August 2003, you were scheduled to work 2p-11p. At approximately 3:45pm, you decided to clock out and go home due to what you called a migraine. You refused to finish your shift. On the 16<sup>th</sup> of August 2003, you were scheduled to work 12p-9p. You called up at 11:10 to say that you would not be in due to migraine. At this time, I informed you that as per our agreement, you would need to bring in a doctor's note to excuse your absence, or I would be serving you with a final written warning. You did not provide me with a note until the 5<sup>th</sup> of September 2003. The note stated that you get migraines, but was unclear as to what, if any, limitations you have for working, and if you were suffering from migraines for the time that you missed work. You and I conversed about this note and its vagueness, at which time you asked me if you could just take the final written warning and return to work. I responded that I would run it by Human Resources, but my initial response was that it would probably be OK. After speaking with Human Resources, I wrote up a final written warning for you on time and attendance, planning to serve it to you upon your next shift. However, you then proceeded to ask for 2 weeks off to work the local supermarket strike. I agreed to this, as the business was in a slow period. I have not seen you since this time, and your final written warning is still pending.

At this time, since our conversation on Friday the 16<sup>th</sup>, you have stated that you are ready to return to work on the 26<sup>th</sup>. Your Doctor's note is through this date. Please return to work on Monday the 26<sup>th</sup> of January at 12pm for a 12p-5p shift. At that time, I will be administering your final written warning that is still pending for time and attendance. If

Exhibit No.	550
Date:	3/19/08
Witness:	Davis
Via M. Smith, CSR 3794	

DESERT HILLS PREMIUM OUTLETS  
48650 SEMINOLE ROAD, SUITE 178, CABAZON, CA 92230  
TEL: 909-849-8446 • FAX: 909-849-3426

POLO 01760



# POLO RALPH LAUREN

F A C T O R Y S T O R E

you are unable to return to work on the 26<sup>th</sup> of January, you will be terminated. If you have any questions on this matter, please feel free to contact me at 909-849-8446. If I am unavailable, please contact Bridget O'Brien in Human Resources at 1-800-578-7656.

Sincerely,

April Hicks  
HR Manager  
Polo Ralph Lauren  
909-849-8446

DESERT HILLS PREMIUM OUTLETS  
48650 SEMINOLE ROAD, SUITE 178, CABAZON, CA 92230  
TEL: 909-849-8446 • FAX: 909-849-3426

POLO 01761

# POLO RALPH LAUREN FACTORY STORES PERFORMANCE DISCUSSION RECAP

Employee:	Renee Davis	65
Discussion Participants:	A. Hicks, E. Radke	
Discussion Initiated by:	A. Hicks, E. Radke	Date: 8-10-03

Check one:

☐ Progress Discussion\* Development guidance, training, directional, or coaching

☐ Disciplinary Discussion\* Specific performance not consistent with company expectations

☒ First Written Warning\* Violation of company regulations/policies or severe/continuing performance not consistent with company expectations

☐ Final Written Warning\* Violation of company regulations/policies or severe/continuing performance not consistent with company expectations

☐ Termination Severe violation of company regulations/policies or failure to show significant improvement in areas of concern.

\* Management should present training recommendations and clarify goals, policies, and expectations.

**Incident or Performance Issue:**  
Renee has 16 instances since the 31st of March where she has either been sick, has not had a ride, or had a personal issue. The dates are as follows: 4-5, 4-8, 4-13, 5-4, 5-15, 6-3, 6-14, 6-15, 6-22, 6-25, 7-2, 7-7, 7-10. On 7-12 and 7-12, Renee was scheduled to work. She called on Monday the 14th, to say that she did not check her schedule and that she was exhausted from being at the hospital with her husband. On 7-27, Renee did not show up for work again. On 7-30 and 8-1, Renee called out sick.

**Impact on Business:**  
When a cashier does not show up for a scheduled shift, this causes the wait for customers to check out to increase. It causes the floor employees to have to cover the cash wrap, which in turn causes less customer service on the sales floor. This causes the store to lose business and affects the profitability.

**Summary of Previous Discussions:**  
n/a

**What is the Action Plan?**  
Renee must show up for all scheduled shifts. The employee hand book only allows for 6 absences in one calendar year. If Renee can not make a shift, she must call in and speak to a manager no later than 2 hours before her shift or as soon as possible thereafter. Renee understands that if she has any further absences, she must get a doctor's note. If further violations in attendance occur, further corrective action will follow.

If this is a goal-setting discussion, please note the follow-up time frame and attach specific goals.

☐ 1 month ☐ 2 months ☐ 3 months ☐ Other \_\_\_\_\_

What is the next step if performance/behavior is not corrected?

☐ Disciplinary Discussion ☐ First Written Warning ☒ Final Written Warning ☐ Termination

Follow-up meetings will occur: ☐ Weekly ☐ Monthly ☐ Other \_\_\_\_\_

**Employee's Comments**  
(attach additional sheet if necessary)

I sorry for the inconvenience  
Renee Davis

I have read this document and have been given an opportunity to comment. I understand that failure to improve my performance or the occurrence of additional incident(s) of unsatisfactory performance or violations of company policies will result in further corrective action, up to and including termination.

Employee Signature: Renee Davis

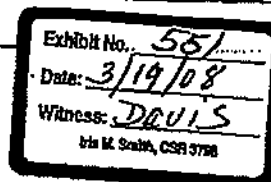
Date: 8-10-03

Supervisor's Signature: [Signature]

Date: 8-10-03

Copy: Employee

Copy: Employee File



Copy: Corporate Human Resources

POLO 01766

# POLO RALPH LAUREN FACTORY STORES PERFORMANCE DISCUSSION RECAP

Employee:	Renee Davis	65
Discussion Participants:	A. Hicks, H. Rafetto	
Discussion Initiated by:	A. Hicks, H. Rafetto	Date: 2-7-04

**Check one:**

☐ Progress Discussion\* Development guidance, training, directional, or coaching

☐ Disciplinary Discussion\* Specific performance not consistent with company expectations

☐ First Written Warning\* Violation of company regulations/policies or severe/continuing performance not consistent with company expectations

☒ Final Written Warning\* Violation of company regulations/policies or severe/continuing performance not consistent with company expectations

☐ Termination Severe violation of company regulations/policies or failure to show significant improvement in areas of concern.

\* Management should present training recommendations and clarify goals, policies, and expectations.

**Incident or Performance Issue:**

Renee has excessive absences on her attendance record. See Attached

**Impact on Business:**

When an associate can not show up for a scheduled shift, this causes a lack of sales floor coverage. This can negatively impact the store's sales.

**Summary of Previous Discussions:**

Renee received a first written warning for time and attendance in August 2003. Since then she has had numerous attendance problems and has been counseled on her actions.

**What is the Action Plan?**

Renee UNDERSTANDS that as of Today, 2-7-04, she is on final written warning for time and attendance. Renee must not be late for any shifts. Renee understands that she must call in and speak to a manager at least 2 hours prior to her shift if she can not come in. She understands that if she is can not make a shift due to illness, she must obtain a Dr.'s note. She will not be allowed to return to work without one. If she is unable to provide a Dr.'s note, Renee will be terminated. If any further violations of time and attendance occur, Renee will be terminated. This will serve as final notice.

If this is a goal-setting discussion, please note the follow-up time frame and attach specific goals.

☐ 1 month ☐ 2 months ☐ 3 months ☐ Other \_\_\_\_\_

What is the next step if performance/behavior is not corrected?

☐ Disciplinary Discussion ☐ First Written Warning ☐ Final Written Warning ☒ Termination

Follow-up meetings will occur: ☐ Weekly ☐ Monthly ☐ Other \_\_\_\_\_

**Employee's Comments**  
(attach additional sheet if necessary)

I have read this document and have been given an opportunity to comment. I understand that failure to improve my performance or the occurrence of additional incident(s) of unsatisfactory performance or violations of company policies will result in further corrective action, up to and including termination.

Employee Signature:  Date: 2-7-04

Supervisor's Signature:  Date: 2-7-04

Copy: Employee

Copy: Employee File

Copy: Corporate Human Resources

POLO 01757

